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think, therefore, that the Subordinate Judge was wrong in giving no effect to this thakbust map. It is not only evidence, but is very good evidence as to what the boundaries of the property were at the time of the permanent settlement, and also as to what they admittedly were in 1859.

Under these circumstances, we set aside the decision of the Subordinate Judge, and remand the case to him in order that he should reconsider the matter, giving effect to the thakbust map, and to the remarks which we have now made in this case. Costs will abide, and follow, the event.

T. A. P. *Case remanded.*

ORIGINAL CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Wilson and Mr. Justice Tottenham.

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LUCKHI NARAIN KHETTRY (DEFENDANT) *v.* SATCOWRIE PYNE (PLAINTIFF).*

Registration Act (III of 1877), ss., 23, 24, 76, 77—Limitation for registration or order of refusal of a document admitted for registration by Registrar —Denial of execution —Refusal to attend—Limitation for suit under s. 77 of the Registration Act.

No period is prescribed by Act III of 1877, within which a document which has been admitted for registration, may be registered, or within which the order of refusal by the Registrar to register the document must be made.

There is nothing in ss. 76 and 77 to compel the Registrar in cases where there has been no express denial of execution, but where the executant refuses to attend at his office, to make his order of refusal within the time limited for admission of execution by ss. 23 and 24. Limitation in respect of a suit under s. 77 begins to run from the date of such order. *Mukhun Lall Panday* v. *Koondun Lall* (1) and *Shama Charan Das* v. *Joyenoolah* (2) relied on. *In the matter of Buttobehary Banerjee* (3) dissented from.

THIS was an appeal from the judgment of Trevelyan, J., in a suit under s. 77 of the Registration Act III of 1877, to compel

* Original Civil Appeal No. 21 of 1888, against the judgment of E. J. Trevelyan, Esq., one of the Judges of this Court, dated the 15th June 1888.

(1) 15 B. L. R., 228; S. C., L. R., 2 I. A., 210; 24 W. R., 75.
(2) I. L. R., 11 Calc., 750. (3) 11 B. L. R., 20.

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registration. The facts of the case and the judgment of the Lower Court are reported in I. L. R., 15 Calc., p. 538.

Mr. *Hill* for the appellant.

Mr. *Pugh* and Mr. *Sale* for the respondent.

Mr. *Hill*.—The suit is barred by limitation. In cases where there is no express denial of execution, but a refusal to attend at the Registrar's office, the Registrar is bound to make his order of refusal within the time limited for admission of execution ; and limitation, in respect of a suit to compel registration, begins to run from the expiration of such period. The case of *In the matter of Buttobehary Banerjee* (1) is in my favour.

The cases of *Edun* v. *Mahomed Siddik* (2) and *Lakhimoni Chowdhrain* v. *Akroomoni Chowdhrain* (3) show that compliance with every provision of the Act is a condition precedent to the maintenance of a suit under s. 77. Refusal to attend is denial within s. 73 : *Radha Kissen Rowra Dakna* v. *Choonee Lal Dutt* (4) : but here there is no evidence of refusal nor subsequent enquiry under s. 74.

Mr. *Sale* for the respondent.—There is no period of limitation within which the Registrar is bound to make his order of refusal ; there is only a period of limitation within which a document must be presented for registration. The Registrar has assumed that the executant denies execution from his refusal to attend. The case of *In the matter* of *Buttobehary Banerjee* (1) is distinguishable from the present one. I rely on the case of *Shama Charan Das* v. *Joyenoolah* (5), which follows the case of *Mukhun Lal Panday* v. *Koondun Lal* (6), and is exactly in point.

Mr. *Hill* in reply :—The Privy Council case of *Mukhun Lal Panday* v. *Koondun Lall* (6) was decided under the Act of 1866. Between the Act of 1866 and the present Act there is a great difference. The former Act contained a period of limitation

(1) 11 B. L. R., 20.
(2) I. L. R., 9 Calc., 150.
(3) I. L. R., 9 Calc., 851.
(4) I. L. R., 5 Calc., 445.
(5) I. L. R., 11 Calc., 750.
(6) 15 B. L. R., 228 ; S. C., L. R., 2 I. A., 210 ; 24 W. R., 75.

as to registration, but none as to the time within which parties were to appear to admit. The present Act fixes a period for the appearance of parties.

The judgment of the Court (PETHERAM, C. J., and WILSON and TOTTENHAM, JJ.,) was delivered by

PETHERAM, C. J.—This is a suit brought under the provisions of s. 77 of the Registration Act, to compel registration of a deed. "The deed was executed on the 18th September 1886. It was presented for registration on the 12th January 1887 by the claimant, who applied for a summons against the executant. He was unable to serve the summons, and on the 30th August 1887, the Registrar refused registration, on the ground that more than eight months had elapsed."

So much I have taken from the judgment of Mr. Justice Trevelyan. The suit was commenced on October 28th, 1887, and the only defence has been that it is barred by limitation.

The statement by the learned Judge in his judgment of the ground of refusal is incomplete; because the statement on the face of the document of the ground for the refusal given by the Registrar is this: "Summons and warrant were issued, but could not be served on the party, as his whereabouts were not known to the claimant. As more than eight months have elapsed since the execution of the deed, and as the claimant has applied for return of the deed, registration is refused." We find then, that the reason given by the Registrar for the refusal was, that the applicant had been unable to obtain the attendance of the executant for the purpose of proving by his evidence the execution by him of the document, and that more than eight months had elapsed and the claimant had applied for the return of the document. And as I understand it, the Registrar, upon these facts, assumed or found, as a fact, that the alleged executant had denied execution of the deed, and he thereupon refused to register it. If that is so, then it comes to be a case in which the Registrar refused to register, because the execution of the deed is denied by the alleged executant; and this, in our opinion, brings the case within the meaning of s. 76 of the Registration Act.

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Several cases have been cited before us on the subject. The first case is that of *In the matter of the Registration Act 1871, and in the matter of Buttobehary Banerjee* (1). That case was decided by Mr. Justice Macpherson; and Mr. Justice Macpherson in that case undoubtedly did hold, that the time must be reckoned from the expiration of the four months, and that all the proceedings must be had within that period. The point involved in that case has been subsequently discussed in the case of *Shama Charan Das* v. *Joyenoolah* (2), which was decided by a Division Bench of this Court in the year 1885. Apparently on the argument of the latter case, the decision of Mr. Justice Macpherson, to which I have just referred, was not brought to the attention of the Court; and in considering the matter now, we must give it due consideration, It seems to us that the case *Shama Charan Das* v. *Joyenoolah* (2), and that in the Privy Council, *Mukhun Lal Panday* v. *Koondun Lal* (3), are directly in point, and are authorities in support of the view taken by the learned Judge in the Court below, and binding on us. But as Mr. Justice Macpherson, in the case cited, took a different view, we proceed to examine the provisions of the Act on the subject. The application to register in this case was made to a Registrar.

The sections which relate to this case are ss. 23, 24, 34, 35, 74, 76 and 77.

By ss. 23 and 24 the document must be presented for registration within four or eight months, as the case may be, and by ss. 34 and 35 the execution may within that time be proved by admission; and (s. 35) in cases in which such admission is not made, and the registering officer is a Registrar, he shall follow the procedure prescribed in Part 12 of the Act.

Sections 76 and 77 of Part 12 relate to refusal by the Registrar. Section 76 provides that, if the Registrar refuses to register for any reason but want of jurisdiction, he shall record the reasons for such refusal and make an order to that effect. No period is prescribed within which a document, which has been

(1) 11 B. L. R., 20,

(2) I L. R., 11 Calc., 750.

(3) 15 B. L. R., 228; S. C., L. R., 2 I. A., 210; 24 W. R., 75.

admitted for registration, may be registered, or within which the order of refusal must be made; but it is obvious, that the order of refusal must be made at some time *after* the expiration of the time allowed for admitting the document, except in cases in which there has been an express refusal. Section 77 provides that a suit to compel registration may be brought within 30 days from the making of the order of refusal; and the contention of the defendant in the present case amounts to this,—that in cases where there has been no express denial of execution, but where the alleged executant has refused to attend, the registering officer must make an order of refusal *within* the time limited for admission of execution, and that the 30 days mentioned in s. 77 will begin to run immediately on the expiration of such time. The law does not say so expressly, and we think it impossible to imply such a meaning, for (amongst others) the reason, that the order of refusal could not be properly made until *after* the expiration of the *whole* period limited for admission by the parties; and if it were made afterwards, and the period of limitation began to run at the expiration of the period limited for admission, it would begin to run from a time before that at which the action could have been brought. And it seems to us that the period of limitation can only begin to run when the order of refusal was made, at which time, and not before, the cause of action accrued.

On the whole then, both on principle and authority, we think the learned Judge in the Court below was right in the conclusion at which he arrived, and we dismiss this appeal with costs.

Appeal dismissed.

Attorneys for the appellant: Messrs. *Sen & Co.*

Attorney for the respondent: Baboo *D. N. Dutt.*

C. D. P.